

In re: LEHMAN BROTHERS INC.,

Debtor.

BARCLAYS CAPITAL INC. and
BARCLAYS BANK PLC,

Appellants and Cross-Appellees,

V.

JAMES W. GIDDENS, as TRUSTEE for
the SIPA LIQUIDATION of LEHMAN
BROTHERS INC.,

Appellee and Cross-Appellant.

File Nos.

11-cv-6053 (KBF)

**NOTICE OF APPEAL TO UNITED STATES COURT OF APPEALS FOR THE
SECOND CIRCUIT**

Barclays Capital Inc. and Barclays Bank PLC (collectively, “Barclays”), the appellants and cross-appellees before the District Court, appeal to the United States Court of Appeals for the Second Circuit from the Revised Opinion and Order of this Court entered in this case on July 17, 2012 (the “District Court Order”), and from the Judgment of the District Court implementing that Order (“District Court Judgment”), entered in this case on July 17, 2012, with respect to:

- (i) that portion of the District Court Judgment and District Court Order ruling that Barclays is not entitled to the immediate and unconditional delivery of the \$769 million promised to Barclays in paragraph 8(ii) of the Clarification Letter, either from securities held in LBI's reserve account maintained in accordance with SEC Rule 15c3-3, or securities of substantially the same nature and value (the "Rule

15c3-3 Assets”), and that thereby affirms (A) the Bankruptcy Court’s July 15, 2011 Order Resolving Barclays’ Motion, insofar as that order denied Barclays’ Motion seeking immediate and unconditional delivery of the Rule 15c3-3 Assets, (B) the Bankruptcy Court’s July 15, 2011 Order Resolving the Trustee’s Motion, insofar as that order grants the Trustee’s Motion seeking relief from the Sale Orders with respect to the Rule 15c3-3 Assets, and (C) the Bankruptcy Court’s July 15, 2011 Order Resolving the Trustee’s Amended Adversary Complaint, insofar as that order grants the claim in Count IV that Barclays has no unconditional right to the Rule 15c3-3 Assets;

- (ii) that portion of the District Court Judgment and District Court Order ruling that, while Barclays is generally entitled to all of the Margin Assets that were in dispute between the parties, Barclays is not entitled to immediate and unconditional delivery of a \$507 million subset of Margin Assets that were listed as a “debit item” in the calculation of LBI’s Rule 15c3-3 reserve account, and that thereby affirms the Bankruptcy Court’s decision that Rule 15c3-3 prohibits the transfer of such assets until such time as the Trustee has satisfied all allowed customer claims.

The parties to the order appealed from and the names and addresses of their respective attorneys are as follows:

Appellant and Counsel

Barclays Capital Inc. and Barclays Bank PLC

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Appellee and Counsel

James W. Giddens, as Trustee for the SIPA Liquidation of Lehman Brothers Inc.

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Neil J. Oxford

Respectfully submitted,

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By: /s/ Hamish P.M. Hume

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*Attorneys for Appellants Barclays Capital
Inc. and Barclays Bank PLC*

Dated: July 19, 2012
New York, New York

CLOSED, APPEAL, ECF, RELATED

**U.S. District Court
Southern District of New York (Foley Square)
CIVIL DOCKET FOR CASE #: 1:11-cv-06053-KBF**

In Re: Lehman Brothers Holdings Inc.
Assigned to: Judge Katherine B. Forrest
Related Case: 1:11-cv-06052-KBF
Case in other court: USBC–SDNY, 08–B–13555 (JMP)
USCA 2nd Circuit, 12–02322
Cause: 28:0158 Notice of Appeal re Bankruptcy Matter (BA

Date Filed: 08/29/2011
Date Terminated: 06/05/2012
Jury Demand: None
Nature of Suit: 422 Bankruptcy Appeal
(801)
Jurisdiction: Federal Question

In Re

Lehman Brothers Holdings Inc.

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PRO HAC VICE
ATTORNEY TO BE NOTICED

Debtor

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represented by **John Frederick Wood**
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Appellant

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Appellant

Barclays Bank PLC

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Jonathan M. Shaw
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Cross Appellant**James W. Giddens***as Trustee for the SIPA Liquidation of
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ATTORNEY TO BE NOTICED**Interested Party****Securities and Exchange Commisison**

V.

Intervenor**Securities Investor Protection
Corporation***Statutory Intervenor pursuant to
Securities Investor Protection Act, 15
U.S.C. § 78eee(d)*

| Date Filed | # | Docket Text |
|------------|----------|---|
| 08/29/2011 | <u>1</u> | NOTICE OF APPEAL FROM THE BANKRUPTCY COURT TO THE S.D.N.Y. from the Order of Judge James M. Peck dated July 15, 2011. Bankruptcy Court Case Numbers: 09-1732A, 08-B-13555 (JMP). Certified copies of file received. Document filed by Barclays Capital Inc. Appellant Brief due by 9/16/2011. (Attachments: # <u>1</u> Exhibit A, # <u>2</u> Exhibit B, # <u>3</u> Exhibit C, # <u>4</u> Exhibit D)(bkar) (Entered: 08/29/2011) |
| 08/29/2011 | <u>2</u> | NOTICE OF BANKRUPTCY CROSS-APPEAL from the Order of Judge James M. Peck dated July 15, 2011. Document filed by James W. Giddens. (bkar) (Entered: 08/29/2011) |

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| 08/29/2011 | <u>3</u> | DESIGNATION OF BANKRUPTCY RECORD ON APPEAL re: <u>1</u> Bankruptcy Appeal,. Document filed by Appellant Barclays Capital Inc. (bkar) (Entered: 08/29/2011) |
| 08/29/2011 | <u>4</u> | CROSS APPEAL DESIGNATION OF BANKRUPTCY RECORD ON APPEAL re: <u>2</u> Bankruptcy Cross Appeal. Document filed by Cross Appellant James W. Giddens. (Attachments: # <u>1</u> STATEMENT OF ISSUES)(bkar) (Entered: 08/29/2011) |
| 08/29/2011 | <u>5</u> | COUNTER CROSS APPEAL DESIGNATION OF BANKRUPTCY RECORD ON APPEAL Document filed by Appellant Barclays Capital Inc. (bkar) (Entered: 08/29/2011) |
| 08/29/2011 | | CASE REFERRED TO Judge Denise L. Cote as possibly similar to 08-cv-8914. (bkar) (Entered: 08/29/2011) |
| 08/29/2011 | | Case Designated ECF. (bkar) (Entered: 08/29/2011) |
| 09/01/2011 | | Mailed letter to the United States Bankruptcy Court – Southern District of New York as notification of filing of Bankruptcy Notice of Appeal (Case Number: 08-B-13555.) with the U.S.D.C. – S.D.N.Y. and the assignment of S.D.N.Y. Case Number: 11-cv-6053. (rdz) (Entered: 09/01/2011) |
| 09/01/2011 | | Mailed notice to the attorney(s) of record. (rdz) (Entered: 09/01/2011) |
| 09/21/2011 | | CASE ACCEPTED AS RELATED. Create association to 1:11-cv-06052-RJH. Notice of Assignment to follow. (pgu) (Entered: 09/21/2011) |
| 09/21/2011 | <u>6</u> | NOTICE OF CASE ASSIGNMENT to Judge Richard J. Holwell. Judge Unassigned is no longer assigned to the case. (pgu) (Entered: 09/21/2011) |
| 09/21/2011 | | Magistrate Judge Theodore H. Katz is so designated. (pgu) (Entered: 09/21/2011) |
| 10/18/2011 | <u>7</u> | SCHEDULING ORDER CONCERNING BRIEFING DEADLINES AND PAGE LIMITS: IT IS HEREBY ORDERED THAT: 1. Barclays' opening brief in support of its appeals and the Trustee's opening brief on its appeals and cross appeals will be due on October 28, 2011, and will be limited to seventy (70) pages each. 2. Barclays' opposition brief to the Trustee's appeals and cross appeals and the Trustee's opposition brief to Barclays' appeals will be due on December 23, 2011, and will be limited to seventy (70) pages each. 3. Barclays' brief in reply to the Trustee's opposition to the Barclays appeals and the Trustee's brief in reply to Barclays' opposition to the Trustee's appeals and cross appeals will be due on February 10, 2012, and will be limited to thirty-five (35) pages each. (Signed by Judge Richard J. Holwell on 10/17/2011) (lmb) (Entered: 10/19/2011) |
| 10/18/2011 | | Set/Reset Deadlines: Appellant Brief due by 10/28/2011. Cross Appellant Brief due by 10/28/2011. Reply to Response to Brief due by 2/10/2012. Responses to Brief due by 12/23/2011. (lmb) (Entered: 10/19/2011) |
| 10/28/2011 | <u>8</u> | NOTICE OF APPEARANCE by William R. Maguire on behalf of James W. Giddens (Maguire, William) (Entered: 10/28/2011) |
| 10/28/2011 | <u>9</u> | NOTICE OF APPEARANCE by Seth D. Rothman on behalf of James W. Giddens (Rothman, Seth) (Entered: 10/28/2011) |
| 10/28/2011 | <u>10</u> | NOTICE OF APPEARANCE by William Robert Stein on behalf of James W. Giddens (Stein, William) (Entered: 10/28/2011) |
| 10/28/2011 | <u>11</u> | NOTICE OF APPEARANCE by Neil John Oxford on behalf of James W. Giddens (Oxford, Neil) (Entered: 10/28/2011) |
| 10/28/2011 | <u>12</u> | RULE 7.1 CORPORATE DISCLOSURE STATEMENT. No Corporate Parent. Document filed by James W. Giddens.(Maguire, William) (Entered: 10/28/2011) |
| 10/28/2011 | <u>13</u> | Appellant's BRIEF. Document filed by Barclays Bank PLC, Barclays Capital Inc.. Appellee Brief due by 11/17/2011. (Schiller, Jonathan) (Entered: 10/28/2011) |
| 10/28/2011 | <u>14</u> | Cross Appellant's BRIEF. Document filed by James W. Giddens. (Attachments: # <u>1</u> Addendum, # <u>2</u> Certificate of Service)(Maguire, William) (Entered: 10/28/2011) |

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| 10/31/2011 | <u>15</u> | MOTION for Jonathan M. Shaw to Appear Pro Hac Vice. Document filed by Barclays Bank PLC, Barclays Capital Inc..(wb) (pgu). (Entered: 10/31/2011) |
| 11/01/2011 | <u>16</u> | RULE 7.1 CORPORATE DISCLOSURE STATEMENT. Identifying Corporate Parent BARCLAYS BANK PLC, Corporate Parent Barclays Group US Inc., Corporate Parent Barclays PLC for Barclays Capital Inc.; Corporate Parent Barclays PLC for Barclays Bank PLC. Document filed by Barclays Bank PLC, Barclays Capital Inc..(Schiller, Jonathan) (Entered: 11/01/2011) |
| 11/01/2011 | <u>17</u> | MOTION for John F. Wood to Appear Pro Hac Vice. Document filed by Lehman Brothers Holdings Inc..(bwa) (pgu). (Entered: 11/01/2011) |
| 11/04/2011 | | CASHIERS OFFICE REMARK on <u>15</u> Motion to Appear Pro Hac Vice in the amount of \$200.00, paid on 10/31/2011, Receipt Number 1020559. (jd) (Entered: 11/04/2011) |
| 11/04/2011 | <u>18</u> | ORDER FOR ADMISSION PRO HAC VICE granting <u>15</u> Motion for Jonathan M. Shaw to Appear Pro Hac Vice. (Signed by Judge Richard J. Holwell on 11/2/2011) (rjm) Modified on 11/4/2011 (rjm). (Entered: 11/04/2011) |
| 11/04/2011 | | CASHIERS OFFICE REMARK on <u>17</u> Motion to Appear Pro Hac Vice in the amount of \$200.00, paid on 11/01/2011, Receipt Number 1020674. (jd) (Entered: 11/04/2011) |
| 11/04/2011 | <u>19</u> | ENDORSED LETTER addressed to Judge Richard J. Holwell from Jonathan D. Schiller dated 10/26/2011 re: We write on behalf of the parties to provide the Court with an electronic copy of the record on appeal in these cases. The parties also wish to advise the Court that, for the Court's convenience, shortly after filing our opening briefs on October 28, 2011, each party will provide the Court with hard copy volumes containing courtesy copies of the excerpts of record cited in its brief. These excerpts will be considerably shorter than the entire designated record, and should provide the Court with a convenient method for referring to the cited material. ENDORSEMENT: SO ORDERED. (Signed by Judge Richard J. Holwell on 11/2/2011) (dj) (Entered: 11/04/2011) |
| 11/15/2011 | 20 | RECORD ON APPEAL (DVD form). Document filed by Barclays Bank PLC, Barclays Capital Inc. ***Accepted for filing by the Honorable Richard J. Holwell on 11/4/2011, document #19. (mro) (Entered: 11/15/2011) |
| 12/20/2011 | <u>21</u> | ORDER FOR ADMISSION PRO HAC VICE granting <u>17</u> Motion for John F. Wood to Appear Pro Hac Vice. It is hereby Ordered that John F. Wood is admitted to practice pro hac vice to represent James W. Giddens, as Trustee for the SIPA Liquidation of Lehman Brothers Inc.(Signed by Judge Richard J. Holwell on 12/19/2011) (mro) (Entered: 12/20/2011) |
| 12/22/2011 | <u>22</u> | BRIEF of Statutory Party Securities and Exchange Commission. Document filed by Securities and Exchange Commisison.(Schrage, Patricia) (Entered: 12/22/2011) |
| 12/23/2011 | <u>23</u> | BRIEF of the Securities Investor Protection Corporation in Support of the Cross-Appeal of the Trustee. Document filed by Securities Investor Protection Corporation.(Attard, Lauren) (Entered: 12/23/2011) |
| 12/23/2011 | <u>24</u> | Appellee's BRIEF. Document filed by James W. Giddens. Appellant Reply Brief due by 1/6/2012. (Attachments: # <u>1</u> Addendum, # <u>2</u> Certificate of Service)(Maguire, William) (Entered: 12/23/2011) |
| 12/23/2011 | <u>25</u> | Appellant's BRIEF. Document filed by Barclays Bank PLC, Barclays Capital Inc.. Appellee Brief due by 1/12/2012. (Attachments: # <u>1</u> Exhibit Exhibit A)(Schiller, Jonathan) (Entered: 12/23/2011) |
| 01/30/2012 | <u>26</u> | STIPULATION AND SCHEDULING ORDER: It is hereby Ordered that: Barclays' reply brief, due on February 10, 2012 will be limited to fifty (50) pages. All portions of the Barclays reply brief other than the discussion of the Rule 15c3-3 and SIPA issues (which include the issue of whether Rule 15c3-3 or SIPA prohibits the transfer of \$507 million in margin deposits from LBI's OCC accounts) will be briefed in no more than thirty-five (35) pages. (Signed by Judge Richard J. Holwell on 1/27/2012) (mro) (Entered: 01/30/2012) |

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| 02/09/2012 | <u>27</u> | NOTICE OF CASE REASSIGNMENT to Judge Katherine B. Forrest. Judge Richard J. Holwell is no longer assigned to the case. (sjo) (Entered: 02/09/2012) |
| 02/10/2012 | <u>28</u> | Cross Appellant's BRIEF. Document filed by James W. Giddens. (Attachments: # <u>1</u> Exhibit 1, # <u>2</u> Certificate of Service)(Maguire, William) (Entered: 02/10/2012) |
| 02/10/2012 | <u>29</u> | Appellant's REPLY BRIEF. Document filed by Barclays Bank PLC, Barclays Capital Inc.. (Schiller, Jonathan) (Entered: 02/10/2012) |
| 02/24/2012 | <u>30</u> | ORDER: Oral Argument set for 4/20/2012 at 02:00 PM in Courtroom 15A, 500 Pearl Street, New York, NY 10007 before Judge Katherine B. Forrest. (Signed by Judge Katherine B. Forrest on 2/24/2012) (ab) (Entered: 02/24/2012) |
| 02/24/2012 | <u>31</u> | ORDER: that oral argument on the cross--appeals in the above-captioned matters shall take place on April 20, 2012, and will commence at 2:00 p.m. The parties shall appear in Courtroom 15A, United States Courthouse, 500 Pearl Street, New York, NY 10007. (Oral Argument set for 4/20/2012 at 02:00 PM in Courtroom 15A, 500 Pearl Street, New York, NY 10007 before Judge Katherine B. Forrest.) (Signed by Judge Katherine B. Forrest on 2/24/2012) (pl) (Entered: 02/24/2012) |
| 04/17/2012 | <u>32</u> | ORDER: The Court issues the following guidance to the parties concerning the argument: 1. The parties should assume the Court has read--and has familiarity with--the briefs as well as major aspects of the record, and need not simply recite the arguments in the briefs, or provide detailed factual background. 2.In addition to the other points the parties would like to raise, the Court would like the parties to address the enclosed topics at oral argument. (Signed by Judge Katherine B. Forrest on 4/17/2012) (ft) (Entered: 04/17/2012) |
| 04/25/2012 | <u>33</u> | ENDORSED LETTER addressed to Judge Katherine B. Forrest from William R. Maguire dated 4/24/2012 re: counsel writes on behalf of James W. Giddens (the "Trustee"), as trustee for the SIPA liquidation of Lehman Brothers Inc. in response to a question from the Court during the April 20, 2012 oral argument, I undertook to provide case law authority for the proposition that a contract signed by a trustee to transfer assets from a bankruptcy estate outside of the ordinary course of business is unenforceable where the contract has not been approved by the bankruptcy court. ENDORSEMENT: The Clerk of the Court is directed to place this letter on the public docket. (Signed by Judge Katherine B. Forrest on 4/25/2012) (pl) (Entered: 04/26/2012) |
| 05/02/2012 | <u>34</u> | ENDORSED LETTER addressed to Judge Katherine B Forrest from Jonathan D Schiller dated 5/1/2012 re: Responding briefly to the Trustee's characterizations of the 3 new cases discussed to the Court of 4/24/2012. ENDORSEMENT: The Clerk of the Court is directed to place this letter on the public docket. (Signed by Judge Katherine B. Forrest on 5/2/2012) (cd) (Entered: 05/02/2012) |
| 06/05/2012 | <u>35</u> | OPINION & ORDER: Accordingly, Barclay's appeal is GRANTED IN PART and DENIED IN PART and the Trustee's cross--appeal is DENIED. The Clerk of the Court is directed to close both of the actions at issue in this Opinion--11 Civ. 6052 and 11 Civ. 6053. (Signed by Judge Katherine B. Forrest on 6/5/2012) (tro) (Entered: 06/05/2012) |
| 06/07/2012 | <u>36</u> | NOTICE OF APPEAL from <u>35</u> Memorandum & Opinion,. Document filed by James W. Giddens. Filing fee \$ 455.00, receipt number 0208-7536403. Form C and Form D are due within 14 days to the Court of Appeals, Second Circuit. (Maguire, William) (Entered: 06/07/2012) |
| 06/07/2012 | | Transmission of Notice of Appeal and Certified Copy of Docket Sheet to US Court of Appeals re: <u>36</u> Notice of Appeal. (nd) (Entered: 06/07/2012) |
| 06/07/2012 | | Appeal Record Sent to USCA (Electronic File). Certified Indexed record on Appeal Electronic Files for <u>14</u> Cross Appellant's Brief filed by James W. Giddens, <u>3</u> Designation of Record on Appeal filed by Barclays Capital Inc., <u>33</u> Endorsed Letter,, <u>19</u> Endorsed Letter,, <u>9</u> Notice of Appearance filed by James W. Giddens, <u>24</u> Appellee's Brief filed by James W. Giddens, <u>32</u> Order,, <u>12</u> Rule 7.1 Corporate Disclosure Statement filed by James W. Giddens, <u>27</u> Notice of Case Assignment/Reassignment, <u>35</u> Memorandum & Opinion, <u>23</u> Brief filed by Securities Investor Protection Corporation, <u>16</u> Rule 7.1 Corporate Disclosure Statement, filed by Barclays Capital Inc., Barclays Bank PLC, <u>18</u> Order on Motion |

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| | | to Appear Pro Hac Vice, <u>17</u> MOTION for John F. Wood to Appear Pro Hac Vice. filed by Lehman Brothers Holdings Inc., <u>15</u> MOTION for Jonathan M. Shaw to Appear Pro Hac Vice. filed by Barclays Capital Inc., Barclays Bank PLC, <u>31</u> Order, Set Hearings,, <u>4</u> Designation of Record on Appeal filed by James W. Giddens, <u>5</u> Designation of Record on Appeal filed by Barclays Capital Inc., <u>28</u> Cross Appellant's Brief filed by James W. Giddens, <u>8</u> Notice of Appearance filed by James W. Giddens, <u>2</u> Bankruptcy Cross Appeal filed by James W. Giddens, <u>6</u> Notice of Case Assignment/Reassignment, <u>34</u> Endorsed Letter, <u>29</u> Appellant's Reply Brief filed by Barclays Capital Inc., Barclays Bank PLC, <u>13</u> Appellant's Brief filed by Barclays Capital Inc., Barclays Bank PLC, <u>25</u> Appellant's Brief filed by Barclays Capital Inc., Barclays Bank PLC, <u>36</u> Notice of Appeal filed by James W. Giddens, <u>21</u> Order on Motion to Appear Pro Hac Vice, <u>22</u> Brief filed by Securities and Exchange Commisison, <u>11</u> Notice of Appearance filed by James W. Giddens, <u>26</u> Stipulation and Order,, <u>1</u> Bankruptcy Appeal, filed by Barclays Capital Inc., <u>7</u> Scheduling Order,,, <u>10</u> Notice of Appearance filed by James W. Giddens, <u>30</u> Order, Set Hearings were transmitted to the U.S. Court of Appeals. (nd) (Entered: 06/07/2012) |
| 06/21/2012 | <u>37</u> | DESIGNATION OF RECORD ON APPEAL re: <u>36</u> Notice of Appeal. Document filed by James W. Giddens. (Attachments: # <u>1</u> Exhibit 1, # <u>2</u> Certificate of Service)(Maguire, William) (Entered: 06/21/2012) |
| 07/16/2012 | <u>38</u> | AMENDED OPINION & ORDER: For the aforementioned reasons, the Bankruptcy Court's February 22, 2011 Opinion is AFFIRMED IN PART and REVERSED IN PART. The Bankruptcy Court's holding that Barclays is not entitled to the 15c3-3 Assets is AFFIRMED; the Bankruptcy Court's finding that Barclays is entitled to the Clearance Box Assets is AFFIRMED; the Bankruptcy Court's holding that Barclays is not entitled to the Margin Assets—and the award of prejudgment interest from Barclays to the Trustee thereon—is REVERSED. Accordingly, Barclay's appeal is GRANTED IN PART and DENIED IN PART and the Trustee's cross-appeal is DENIED. The Clerk of the Court is directed to close both of the actions at issue in this Opinion—11 Civ. 6052 and 11 Civ. 6053. (Signed by Judge Katherine B. Forrest on 7/16/2012) (mro) (Entered: 07/17/2012) |
| 07/16/2012 | | Transmission to Judgments and Orders Clerk. Transmitted re: <u>38</u> Memorandum & Opinion to the Judgments and Orders Clerk. (mro) (Entered: 07/17/2012) |
| 07/16/2012 | <u>39</u> | JUDGMENT that 1. Barclays is entitled to all of the "Margin Assets" as defined on page 2 of the Court's Opinion (as revised), except as specifically provided below with respect to the \$507 million OCC item, and therefore: a. The Bankruptcy Court's decision holding that Barclays is not entitled to the Margin Assets, and the corresponding portions of the Bankruptcy Court's July 15, 2011 Order Resolving the Trustee's Motion, its July 15, 2011 Order Resolving The Trustee's Adversary Complaint, and its July 15, 2011 Order Resolving Barclays' Motion that grant or deny relief based upon the Bankruptcy Court's ruling that Barclay is not entitled to the Margin Assets (found at R.67184-87, R.67327-30, and R.67188-90), are hereby REVERSED; b. The Bankruptcy Court's July 15, 2011 Judgment for the Trustee with respect to the Margin Assets (found at R.67370-71), which entered judgment against Barclays in the amount of \$2,054,000,000.00, plus a judgment of prejudgment interest in the amount of \$280,000,000, is hereby REVERSED; c. The Bankruptcy Court is directed to GRANT Barclays' January 29, 2010 Motion to Enforce The Sale Order And To Secure Delivery Of All Undelivered Assets as such motion relates to the Margin Assets, and: (i) to order the Trustee to transfer to Barclays the value as of the date of this Judgment of all Margin Assets that are in his possession, including any earnings received on those assets, and including any cash into which any such assets have matured or been converted plus any earnings on that cash, but with such amount reduced by \$507 million to reflect the ruling in 3, below; (ii) to order the Trustee to transfer to Barclays the value of any Margin Assets that may in the future come into the Trustee's possession, which value is to be determined as of the date that the Trustee receives those assets, including any earnings received on those assets, and including any cash into which any such assets have matured or been converted plus any earnings on that cash, and to cooperate with Barclays in causing the delivery to Barclays, as soon as practicable, of any and all Margin Assets not yet delivered to Barclays and currently in the possession of third parties, and (iii) to award Barclays additional relief, if any, as |

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| | | <p>may be appropriate to the extent Barclays is unable to recover any Margin Assets currently in the possession of third parties. 2. That for the reasons stated in the Court's Opinion of June 5, 2012, Barclays is entitled to the Clearance Box Assets as defined in the Bankruptcy Court's February 22, 2011 Opinion, and therefore: a. The Bankruptcy Court's decision holding that Barclays is entitled to the Clearance Box Assets, and the corresponding portions of the Bankruptcy Court's July 15, 2011 Order Resolving the Trustee's Motion, its July 15, 2011 Order Resolving The Trustee's Adversary Complaint, and its July 15, 2011 Order Resolving Barclays' Motion that grant or deny relief based upon the Bankruptcy Court's ruling that Barclay is entitled to the Clearance Box Assets (found at R.67184-87, R.67327-30, and R.67188-90), are hereby AFFIRMED; b. The Bankruptcy Court's July 15, 2011 Judgment for Barclays with respect to the Clearance Box Assets (found at R.67429-30), which entered judgment against the Trustee in the amount of \$1,000,000,000.00, is hereby AFFIRMED. 3. That for the reasons stated in the Court's Opinion of June 5, 2012, with respect to the Rule 15c3-3 Assets, as those assets are defined in the Bankruptcy Court's February 22, 2011 Opinion: a. The Bankruptcy Court's decision holding that Barclays has only a conditional entitlement to the Rule 15c3-3 Assets, such that it is entitled to the Rule 15c33 Assets only if and to the extent there are remaining assets in the estate after the Trustee is able to pay all allowed customer claims in accordance with SIPA, is AFFIRMED; b. The portions of the Bankruptcy Court's July 15, 2011 Order Resolving the Trustee's Motion, its July 15, 2011 Order Resolving The Trustee's Adversary Complaint, and its July 15, 2011 Order Resolving Barclays' Motion that grant or deny relief based upon the Bankruptcy Court's ruling that Barclay has only a conditional entitlement to the \$769 million in Rule 15c3-3 Assets (found at R.67184-87, R.67327-30, and R.67188-90), are hereby AFFIRMED, and the Bankruptcy Court is directed to enter similar orders providing that Barclays has the same conditional entitlement to the \$507 million portion of the Rule 15c3-3 Assets that were held as deposits in LBI's OCC customer account, and that constituted a debit item in the Rule 15c3-3 calculation. 4. The Bankruptcy Court is directed to enter any further orders as may be reasonably necessary or appropriate to implement this Judgment or the rulings in this Court's June 5, 2012 decision. 5. This Judgment is stayed pending resolution of all appeals from this Judgment, with such stay terminating 30 days after such appeals are finally resolved, and the Trustee is ordered to reserve the amount of \$4.6 billion during the period of this stay, and not to distribute or pledge those assets to any other party. In addition, in accordance with 28 U.S.C. § 1961, the Trustee shall pay post-judgment interest on the amounts the Trustee is required to transfer to Barclays under this Judgment, measured from the date of this Judgment to the date of payment (in addition to any post-judgment interest owed on the Judgment in Barclays' favor entered by the District Court and affirmed above). (Signed by Judge Katherine B. Forrest on 7/16/12) (Attachments: # <u>1</u> NOTICE OF RIGHT TO APPEAL)(ml) (Entered: 07/17/2012)</p> |
| 07/17/2012 | <u>40</u> | AMENDED NOTICE OF APPEAL re: <u>36</u> Notice of Appeal, <u>39</u> Judgment,,,,,,,,,,,,,,,,,,,,, <u>38</u> Memorandum & Opinion,,, Document filed by James W. Giddens. (Maguire, William) (Entered: 07/17/2012) |
| 07/18/2012 | | USCA Case Number 12-2322 from the USCA 2nd Circuit assigned to <u>40</u> Amended Notice of Appeal filed by James W. Giddens, <u>36</u> Notice of Appeal filed by James W. Giddens. (tp) (Entered: 07/18/2012) |
| 07/18/2012 | | Transmission of Amended Notice of Appeal and Certified Copy of Docket Sheet to US Court of Appeals re: <u>40</u> Amended Notice of Appeal. (tp) (Entered: 07/18/2012) |
| 07/18/2012 | | First Supplemental ROA Sent to USCA (Electronic File). Certified Supplemental Indexed record on Appeal Electronic Files for <u>39</u> Judgment, <u>40</u> Amended Notice of Appeal filed by James W. Giddens, <u>38</u> Memorandum & Opinion, <u>37</u> Designation of Record on Appeal filed by James W. Giddens USCA Case Number 12-2322, were transmitted to the U.S. Court of Appeals. (tp) (Entered: 07/18/2012) |
| 07/18/2012 | <u>42</u> | TRUE COPY ORDER of USCA as to <u>40</u> Amended Notice of Appeal filed by James W. Giddens, <u>41</u> Notice of Appeal, filed by Barclays Capital Inc., Barclays Bank PLC, <u>36</u> Notice of Appeal filed by James W. Giddens USCA Case Number 12-2322, 12-2328(L), 12-2657 (xap). IT IS HEREBY ORDERED that the joint motion by the parties for limited remand to the district court, pursuant to |

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| | | FRAP12.1, to allow the District Court to make clerical corrections to its opinion and order and to issue the agreed judgment is GRANTED. This Court retains jurisdiction over the above-referenced matters, and the parties must promptly notify the circuit clerk when the district court has entered the corrected opinion and agreed judgment. Catherine O'Hagan Wolfe, Clerk USCA for the Second Circuit. Certified: 07/18/2012. (nd) (Entered: 07/19/2012) |
| 07/18/2012 | <u>43</u> | ORDER of USCA (Certified Copy) as to <u>40</u> Amended Notice of Appeal filed by James W. Giddens, <u>41</u> Notice of Appeal, filed by Barclays Capital Inc., Barclays Bank PLC, <u>36</u> Notice of Appeal filed by James W. Giddens USCA Case Number 12-2322. This appeal was withdrawn subject to reinstatement upon terms agreed to by the parties. Counsel for the appellant has submitted a timely notice of reinstatement. It is hereby ORDERED that the appeal is REINSTATED. Catherine O'Hagan Wolfe, Clerk USCA for the Second Circuit. Certified: 7/18/2012. (nd) (Entered: 07/19/2012) |
| 07/19/2012 | <u>41</u> | NOTICE OF APPEAL from <u>39</u> Judgment,,,,,,,,,,,,,,,,,,,,, <u>38</u> Memorandum & Opinion,,, Document filed by Barclays Bank PLC, Barclays Capital Inc.. Filing fee \$ 455.00, receipt number 0208-7655217. Form C and Form D are due within 14 days to the Court of Appeals, Second Circuit. (Hume, Hamish) (Entered: 07/19/2012) |
| 07/19/2012 | | Transmission of Notice of Appeal and Certified Copy of Docket Sheet to US Court of Appeals re: <u>41</u> Notice of Appeal. (tp) (Entered: 07/19/2012) |
| 07/19/2012 | | Appeal Record Sent to USCA (Electronic File). Certified Indexed record on Appeal Electronic Files for <u>14</u> Cross Appellant's Brief filed by James W. Giddens, <u>3</u> Designation of Record on Appeal filed by Barclays Capital Inc., <u>33</u> Endorsed Letter,, <u>19</u> Endorsed Letter, <u>9</u> Notice of Appearance filed by James W. Giddens, <u>24</u> Appellee's Brief filed by James W. Giddens, <u>32</u> Order, <u>12</u> Rule 7.1 Corporate Disclosure Statement filed by James W. Giddens, <u>27</u> Notice of Case Assignment/Reassignment, <u>35</u> Memorandum & Opinion, <u>23</u> Brief filed by Securities Investor Protection Corporation, <u>16</u> Rule 7.1 Corporate Disclosure Statement, filed by Barclays Capital Inc., Barclays Bank PLC, <u>18</u> Order on Motion to Appear Pro Hac Vice, <u>17</u> MOTION for John F. Wood to Appear Pro Hac Vice. filed by Lehman Brothers Holdings Inc., <u>15</u> MOTION for Jonathan M. Shaw to Appear Pro Hac Vice. filed by Barclays Capital Inc., Barclays Bank PLC, <u>31</u> Order, Set Hearings, <u>4</u> Designation of Record on Appeal filed by James W. Giddens, <u>5</u> Designation of Record on Appeal filed by Barclays Capital Inc., <u>28</u> Cross Appellant's Brief filed by James W. Giddens, <u>8</u> Notice of Appearance filed by James W. Giddens, <u>2</u> Bankruptcy Cross Appeal filed by James W. Giddens, <u>6</u> Notice of Case Assignment/Reassignment, <u>34</u> Endorsed Letter, <u>29</u> Appellant's Reply Brief filed by Barclays Capital Inc., Barclays Bank PLC, <u>13</u> Appellant's Brief filed by Barclays Capital Inc., Barclays Bank PLC, <u>25</u> Appellant's Brief filed by Barclays Capital Inc., Barclays Bank PLC, <u>36</u> Notice of Appeal filed by James W. Giddens, <u>21</u> Order on Motion to Appear Pro Hac Vice, <u>22</u> Brief filed by Securities and Exchange Commisison, <u>11</u> Notice of Appearance filed by James W. Giddens, <u>26</u> Stipulation and Order, <u>1</u> Bankruptcy Appeal, filed by Barclays Capital Inc., <u>7</u> Scheduling Order, <u>10</u> Notice of Appearance filed by James W. Giddens, <u>30</u> Order, Set Hearings, <u>39</u> Judgment, <u>40</u> Amended Notice of Appeal filed by James W. Giddens, <u>38</u> Memorandum & Opinion, <u>41</u> Notice of Appeal, filed by Barclays Capital Inc., Barclays Bank PLC, <u>37</u> Designation of Record on Appeal filed by James W. Giddens were transmitted to the U.S. Court of Appeals. (tp) (Entered: 07/19/2012) |